

Health and Human Services Committee

Gross Receipts Tax Deduction for Dialysis Services

December 1, 2011

Objectives of Legislation:

- Extend the application to dialysis facilities of the deduction(s) afforded by NMSA 1978 § 7-9-77.1 for services provided to Medicare beneficiaries. The proposed legislation would not become effective until July 1, 2013 and would be phased-in incrementally over a three-year period, culminating in a full exemption effective July 1, 2015.
- Current measure is identical to that introduced in the 2011 session as SB 178 and HB 190, other than the effective date has been changed from July 1, 2012 to July 1, 2013 and the term “palliative care” has been removed from the prior version in response to feedback received last year during committee hearings.
- Provide financial relief for dialysis facilities furnishing services to Medicare patients that are impacted by both reduced Medicare payments and negative margins on treating Medicare patients, as well as the imposition of the 7 – 8% New Mexico Gross Receipts Tax (“GRT”) on their services, for which they cannot seek reimbursement from Medicare.
- Resolve the current inequity of tax treatment of dialysis facilities relative to medical doctors and nurses, clinical laboratories, home health agencies, hospices and nursing homes, as well as athletic trainers, chiropractic physicians, counselor and therapist practitioners, dentists, massage therapists, naprapaths, nurses, nutritionists, dietitians, occupational therapists, optometrists, pharmacists, physical therapists, psychologists, radiologic technologists, respiratory care practitioners, audiologists, speech-language pathologists, social workers and podiatrists, who have been afforded relief from the GRT on their services provided to Medicare patients through enactment of the NMSA 1978 § 7-9-77.1 amendments in 2007.
- Partially resolve the current inequity of tax treatment of dialysis facilities relative to for-profit hospitals, which enjoy a full deduction from the state GRT for services provided to all patients through enactment of NMSA 1978 §§ 7-9-73.1 and 7-9-96.1.
- Partially resolve (to the extent of Medicare patients) the current inequity of tax treatment of for-profit dialysis facilities that are subject to the GRT on their services as compared with non-profit hospitals and dialysis facilities that are not subject to the GRT on services provided to patients.
- Improve the quality and accessibility of life-sustaining dialysis treatments for New Mexico citizens suffering from Stage 5 Chronic Kidney Disease (“CKD”), also known as End-Stage Renal Disease (“ESRD”).
- Attract and retain the best dialysis providers in the country for the benefit of New Mexico’s dialysis patient population.

Statement of Need:

- ESRD patients represent one of the sickest and most financially vulnerable segments of New Mexico's patient population. These patients often suffer not just from kidney failure, but also other diseases (co-morbidities) such as diabetes, heart disease and hypertension. Many dialysis patients are unable to work full-time, or at all, due to the time expended traveling to and from dialysis centers for treatment, as well as the time spent undergoing the treatments themselves, typical three (3) times per week for 3 – 4 hours per session.
- Access to and the long-term viability and expansion of available dialysis clinics in New Mexico is essential to the effective treatment of New Mexico's patient population suffering from ESRD, especially considering the geographic size of the state and number of remote rural communities in which patients requiring treatment reside.
- Whereas many of the other categories of healthcare practitioners and facilities previously afforded relief from the GRT under NMSA 1978 § 7-9-77.1 would perhaps have a Medicare patient base representing anywhere between 30% and 50% of their overall patient population, the New Mexico patient base for dialysis facilities is comprised of approximately 75% Medicare patients due to the unique characteristics of dialysis treatment and coverage under the Medicare benefits program regardless of age.
- Before even considering the financial impact of absorption of the GRT imposed on dialysis services, dialysis facilities already have negative margins on the provision of these life-sustaining services to Medicare patients, which again typically comprise 75% or more of the patient base in New Mexico.
- Non-profit facilities are not subject to the GRT on their services and therefore enjoy a competitive advantage over the for-profit facilities.
- Dialysis facilities that do not enjoy federal tax-exempt status (e.g. 501(c)(3)) are providing the same federally mandated benefits, receive the same federal reimbursement amounts, but are burdened with an additional and significant unrecoverable cost in the form of the 7% - 8% New Mexico gross receipts tax levy.
- Over the last decade (1998 – 2008), New Mexico has seen a 23.1% increase in the number of dialysis patients per million. The state currently has 2,547 citizens undergoing in-center dialysis treatment (as of 2009) and that number is expected to grow by another 10% or more by the end of 2013.
- The majority of ESRD patients in New Mexico are Hispanic at 44.5% and in the U.S., the number of Hispanics with ESRD increased 117% over the last decade (1998 – 2008), reflecting the highest growth rate of all ethnic groups, with Native Americans representing the third highest growth rate at 52%.

State Taxation Comparisons:

- New Mexico is one of only two states in the country that tax medical services at all, with Hawaii being the other. However, Hawaii's tax rate on services is generally 4%, which is roughly half the average tax rate in New Mexico. Additionally, while Hawaii taxes the

services at 4%, they offer a reduced wholesale rate of 0.5% on the purchases of the dialysis equipment and related supply items used in treatment procedures.

- Along with the taxation of medical services in New Mexico, for-profit dialysis facilities are also required to pay 7 – 8% GRT on their purchases of dialysis equipment and related supplies, thereby creating an effective GRT burden of 15% or more on these items, since the cost of the equipment and supplies are components of the service reimbursement paid by Medicare and private insurers, which is taxed again.
- Two of New Mexico's neighboring states (Texas and Arizona) do not tax medical services and also offer a full tax exemption on the purchases of all dialysis related equipment and supplies.
- Two other neighboring states of New Mexico (Colorado and Utah) also do not tax medical services and offer limited tax exemptions with respect to purchases of dialysis equipment and supplies.

Facts Regarding New Mexico Dialysis Facilities:

- There are thirty-two (32) free-standing dialysis facilities currently operating in New Mexico.
- Twelve (12) dialysis facilities are organized under IRC §501(c)(3) and are not subject to New Mexico GRT on their services, nor are they taxed on purchases of equipment or supplies.
- The remaining twenty (20) dialysis facilities in New Mexico do not receive the benefit of exemption under IRC §501(c)(3) and are paying 7% - 8% in gross receipts tax on the same Medicare-covered dialysis services at the same Medicare reimbursement rates as the non-profit facilities.

Medicare Facts:

- Medicare is a federal benefits program aimed at making essential healthcare affordable to at-risk portions of the population.
 - To be eligible for Medicare, one must be a United States citizen and meet certain requirements. If the following conditions are met, you are eligible for Medicare:
 - You are 65 years of age or older.
 - You are under 65, but you have certain disabilities.
 - You have End-Stage Renal Disease (kidney failure that requires a transplant or dialysis).
- Because nearly 75% of all dialysis treatments in New Mexico are covered by Medicare, dialysis facilities are acting in a quasi-governmental capacity and serve the public interest in providing life-sustaining dialysis treatments to New Mexico citizens at minimal cost. (This fact has been established by the United States Supreme Court in Fischer v. US, 529 U.S. 667 (2000)).

Chronic Kidney Disease (“CKD”) Overview:

- One in nine Americans suffer from CKD, which is the progressive loss of kidney function over time.
- Twenty-six (26) million Americans currently suffer from CKD and millions of others are at increased risk due to the heightened incidence in the population of factors such as obesity, diabetes and hypertension that often lead to CKD.
- African Americans, Hispanics, Pacific Islanders, Native Americans and seniors are at increased risk of developing CKD.
- As CKD progresses, it results ultimately in kidney failure (Stage 5 CKD, also known as ESRD).
- Failing kidneys are unable to remove excess fluid or process waste and toxins that accumulate in the blood as a result of the breakdown of food.
- Once a patient enters Stage 5 CKD, the only treatment options are a kidney transplant or ongoing dialysis treatment.

Dialysis Overview:

- Every day, a healthy person’s kidneys process about 200 quarts of blood to remove about two quarts of waste products and extra water. The wastes in a person’s blood are the result of the normal breakdown of active tissues and from the food that is ingested.
- In a person suffering from ESRD, in many cases the kidneys are completely non-functional or function at such a minimal level that fluid and toxins build up at a rate greater than that at which they may be removed from the body. Accordingly, absent a kidney transplant, dialysis treatment is the only life-saving option for patients suffering from ESRD.
- When a patient goes to a dialysis treatment facility, he or she is connected to a dialysis machine that serves as an artificial kidney to cleanse the blood of metabolic waste and restore proper fluid equilibrium.
- Hemodialysis generally requires a patient suffering from ESRD to visit a dialysis treatment facility three times per week for three- to four-hour treatments in order to remove accumulated toxins such as potassium and urea, as well as excess fluids, from the blood. In a healthy person, this filtration process is accomplished by the kidneys, with the toxins and fluids removed from the body through the normal process of urination.
- Dialysis does not cure kidney disease. Without a kidney transplant, patients must undergo dialysis treatments for their entire lives.
- Without regular dialysis treatments or a successful kidney transplant, kidney failure results in death, usually within 8 – 12 days of ceasing treatment for ESRD patients.